



**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Grunley Construction Co., Inc.

**File:** B-266344

**Date:** February 16, 1996

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Herman M. Braude, Esq., Braude & Margulies, P.C., for the protester.  
Terrence J. Tychan, Department of Health and Human Services, for the agency.  
Jeanne W. Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel,  
GAO, participated in the preparation of the decision.

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## DIGEST

Agency improperly permitted correction of alleged mistake in bid where bidder claimed mistake in line item price rather than in total price, but (1) it is not clear from face of bid which of the two was intended; (2) either price reasonably could have been intended; and (3) bid is low under only one of the two reasonable interpretations.

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## DECISION

Grunley Construction Co., Inc. protests the award of a contract to Modern Electric of Maryland, Ltd. under invitation for bids (IFB) No. 263-95-B-CP-0239, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for construction services to install emergency generators and an uninterruptible power source (UPS) in Building 12 on the NIH campus in Bethesda, Maryland. Grunley contends that NIH improperly allowed Modern to correct a mistake in its bid.

We sustain the protest.

The bid schedule contained three line items: base bid item 0001, item 0002 for option 1, and item 0003 for two deductive services. The IFB provided that the low bidder would be "the responsible bidder offering the lowest aggregate price for (1) the base bid plus (2) option #1 minus (3) the deductive bid items. . . ."

Twelve bids were received by the August 24, 1995 bid opening. Modern was identified as the apparent low bidder, with a total aggregate bid of \$3,426,380; Grunley submitted the second low bid, \$3,504,000. Modern's bid schedule was as follows:

Line Item	Modern's bid
Base Item 0001	\$3,903,495
Item 0002 Option 1	\$12,243
Subtotal 1 (items 0001 + 0002)	\$3,683,480
Item 0003	
Deduct 1	\$188,019
Deduct 2	\$69,081
Subtotal 2 (Deduct 1 + Deduct 2)	\$257,100
Total Aggregate Amount (Subtotal 1 - Subtotal 2)	\$3,426,380

After bid opening, contracting officials noted that Modern's bid schedule was not arithmetically correct: the correct sum of its base item price, \$3,903,495, and its option 1 price, \$12,243, was \$3,915,738, rather than \$3,683,480, the price listed for subtotal 1 on the schedule. The submitted total aggregate amount figure, \$3,426,380, was correct based on the stated \$3,683,480 price for subtotal 1 (*i.e.*, \$3,683,480 - \$257,100 = \$3,426,380). However, subtracting the deduct items from the arithmetically correct subtotal 1 price (\$3,915,738 - \$257,100), results in a total aggregate amount of \$3,658,638, which is higher than Grunley's bid.

In claiming a mistake in the base item price, Modern explained that its stated subtotal 1 price was correct, and that its low total aggregate amount, calculated using this number, therefore also was correct. According to Modern, its intended base item price was \$3,671,237; the \$3,903,495 base item price shown on the bid schedule was too high, and resulted from an employee's misunderstanding of a last minute telephonic change in the bid. The employee allegedly was told that 5 percent profit and 1 percent bonding costs already were included in the price, but he erroneously added those amounts to the intended \$3,671,237 figure, resulting in the \$3,903,495 price shown for the base item. After reviewing all the information, contracting officials allowed correction and made award to Modern. On September 29, award was made to Modern.

Grunley argues that allowing correction was improper in this case because the intended bid cannot be ascertained from the bid itself—it cannot be determined from the face of the bid whether the error lies in the base bid price or in the subtotal 1

price due to incorrect addition. Since either interpretation is reasonable, and Modern's bid would not be low under the second interpretation, the agency could not properly permit correction. We agree.

The Federal Acquisition Regulation (FAR) allows for correction of mistakes in bids under specified circumstances. See FAR § 14.406. Where correction would result in displacing one or more lower bids, it may not be allowed unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. FAR § 14.406-3(a); Virginia Beach Air Conditioning Corp., 69 Comp. Gen. 178 (1990), 90-1 CPD ¶ 78. Correction is permitted where a bid discrepancy admits to only one reasonable interpretation that is ascertainable from the face of the bid in light of the government estimate, the range of other bids, or the contracting officer's logic and experience. Roy McGinnis & Co., Inc., B-239710, Sept. 24, 1990, 90-2 CPD ¶ 251. On the other hand, where a bid is reasonably susceptible of being interpreted as offering either one of two prices shown on its face, only one of which is low, the bid must be rejected since the request for correction is considered as resulting in displacing a lower bid. Virginia Beach Air Conditioning Corp., *supra*; Keister Constr., Inc., B-227027, Aug. 5, 1987, 87-2 CPD ¶ 129.

There are two possible explanations for the discrepancy on the face of Modern's bid: (1) subtotal 1 and the total aggregate amount shown are correct, and the base item price is erroneous, as Modern claims, or (2) the base item price is correct, an error was made in adding it to the option 1 price so that the subtotal 1 figure and therefore, the total aggregate amount, are incorrect. We see nothing on the face of the bid which either supports or renders unreasonable either of these interpretations. In this regard, both possible total aggregate amounts (\$3,426,380 and \$3,658,638) are generally within the range of the other bids received, so this comparison provides no basis for concluding that one or the other likely was not intended.

The agency maintains that the only reasonable interpretation of Modern's bid was that the error lay in the base bid price and that the intended total aggregate amount was \$3,426,380, as stated on Modern's bid schedule. In the agency's view, since all the other line items are arithmetically correct and internally consistent, the base item was the only place where a mistake could have been made. According to the agency, if the mistake were anywhere but in the base item, one would reasonably expect to find mistaken subtotals elsewhere on the schedule and that working backward from the aggregate listed in the bid, in a logical progression, shows that this is not the case.

This argument is flawed in that it is based on the unsupported assumption that the total aggregate amount is correct. As discussed, there simply is no evidence on the face of the bid that this was the case. Based on the bid itself, it is just as logical to

start with the assumption that the stated base item price is correct, and that an error (e.g., faulty addition or transcription) was made in stating the sum of the base item and option 1 prices, resulting in an understated subtotal 1 price.

The agency contends that this interpretation is "strained and unnatural," in that it requires one to assume that "entirely gratuitous and inexplicable" errors have also occurred in the two subtotal figures. While we agree with the agency that it is not apparent how a transcription, addition or other error might have been made in reaching the subtotal 1 price, neither is it at all apparent from the bid (that is, without looking at Modern's explanation) how any error in the base item bid could have been made. The agency's inclination to believe Modern's claim of a base item price mistake results solely from consideration of the firm's explanation. Without that explanation, there would be absolutely no clue as to which item was mistaken, or as to how the mistake was made; had Modern offered instead an explanation as to why the subtotal 1 price was mistaken, that explanation could appear just as reasonable.

The danger in these circumstances, obviously, is that only the bidder claiming the mistake has access to the information--except for the bid itself--necessary to support the mistake claim. Allowing a bidder to explain its intent after bid opening thus could afford the bidder the option of characterizing its claimed mistake in a manner that would result in the displacement of the bid that otherwise would have been low. While the mistake-in-bid rules are intended to permit relief to bidders who make genuine mistakes in their bids, the paramount concern of the rules is the protection of the competitive bidding system. Eagle Elec., B-228500, Feb. 5, 1988, 88-1 CPD ¶ 116. The preservation of fairness in the system precludes allowing a bidder to make such an election after the results of the bidding are known. Hudgins Constr. Co., Inc., B-213307, Nov. 15, 1983, 83-2 CPD ¶ 570.

We conclude that Modern should not have been permitted to correct its bid, and that award should have been made to Grunley. Although the protest was filed within 10 calendar days after award, the agency proceeded with performance notwithstanding the protest based on its determination, pursuant to FAR § 33.104(c)(2)(ii), that urgent and compelling circumstances which significantly affect the government's interests would not permit awaiting our decision. The agency informs us that 35 percent of the work has been performed and that 50 percent of contract funds have been expended. Under these circumstances, termination of Modern's contract and award to Grunley would not be practicable. However, Grunley is entitled to reimbursement of the costs of filing and pursuing this protest, including reasonable attorneys' fees, and its bid preparation costs.

4 C.F.R. § 21.6(d)(1), (2) (1995). Grunley should file its claim, detailing and certifying the time expended and cost incurred, directly with NIH within 60 days after receipt of this decision. 4 C.F.R. § 21.6(f)(1).

The protest is sustained.

Comptroller General  
of the United States